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DATE: June 28, 2018

TO: Interested Parties

FROM: Office of Corporation Counsel

SUBJECT: Advisory Legal Memorandum:
Impact of Repeal of Minimum Wage Law on MCGO Chapter 111

I. Act 327 - Background

This memorandum addresses the impact of 2017 Wisconsin Act 327 on Milwaukee County General Ordinance Chapter 111 and compliance with that revised state law. On April 16, 2018, Governor Scott Walker signed Act 327 into law, based upon Assembly Bill 748. Act 327 became effective on April 18, 2018, the day after its April 17, 2018 publication. It repealed Wis. Stat. § 104.001(3), which had permitted a local governmental entity (county, city, village or town) to enact and enforce an ordinance mandating a minimum wage for 3 classes of individuals: 1) the local governmental entity's own employees; 2) employees performing work under a contract for services to the local governmental entity; and 3) employees performing work funded by financial assistance from the local governmental entity. Here is the relevant statute, with the repealed provision highlighted and stricken:

104.001 Statewide concern; uniformity.

(1) The legislature finds that the provision of a minimum wage that is uniform throughout the state is a matter of statewide concern and that the enactment of a minimum wage ordinance by a city, village, town, or county would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of this chapter. Therefore, this chapter shall be construed as an enactment of statewide concern for the purpose of providing a minimum wage that is uniform throughout the state.

(2) A city, village, town, or county may not enact and administer an ordinance establishing a minimum wage. Any city, village, town, or county minimum wage ordinance that is in effect on June 16, 2005, is void.

~~(3) This section does not affect an ordinance that, subject to s. 66.0903, requires an employee of a county, city, village, or town, an employee who performs work under a contract for the provision of services to a county, city, village, or town, or an employee who performs work that is funded by financial assistance from a~~

county, city, village, or town, to be paid at a minimum wage rate specified in the ordinance.

II. Act 327's Impact on MCGO Chapter 111

A. New Agreements

Post-Act 327, Milwaukee County cannot implement Chapter 111's minimum wage provisions in new contracts, leases or concession agreements, or economic development financial assistance projects (of any value). Specifically, the prohibition applies to the following MCGO Chapter 111 applications:

- a) A service contract as defined in MCGO 32.20(17), or an agreement to provide personal care and supportive home care to persons with disabilities or the frail elderly provided by agencies that exclusively contract with Milwaukee County, involving an amount greater than or equal to twenty thousand dollars (\$20,000.00); and
- b) A lease agreement involving county funding or a public asset involving an amount greater than or equal to twenty thousand dollars (\$20,000.00); and
- c) A concession agreement involving an amount greater than or equal to twenty-thousand dollars (\$20,000.00); and
- d) Economic development financial assistance involving an amount of financial assistance from the county greater than or equal to one million dollars (\$1,000,000.00).

See MCGO 1.11.01. The ordinance contains detailed definitions for these agreements at MCGO 111.02. The ordinance in its entirety can be found at this link:

https://library.municode.com/wi/milwaukee_county/codes/code_of_ordinances?nodeId=MICOCOGEOORVOII_CH11MIWA

B. Existing Agreements

Contracts pre-dating Act 327's enactment are binding on the parties and not subject to the Act's minimum wage prohibition, despite inclusion of terms for an annual escalator of the minimum wage under MCGO Chapter 111. Ultimately, in entering into these agreements, the parties struck a deal that factored that annual uptick into the overall pricing.

Wisconsin contract law states that "[t]he lodestar of contract interpretation is the intent of the parties." *Huml v. Vlazny*, 2006 WI 87, ¶ 52, 293 Wis. 2d 169, 716 N.W.2d 807. "In ascertaining the intent of the parties, contract terms should be given their plain or ordinary meaning." *Id.* "If the contract is unambiguous, [the court's] attempt to determine the parties' intent ends with the four corners of the contract, without consideration of extrinsic evidence." *Id.*

Therefore, it is not required that pre-Act 327 contracts be renegotiated. Their agreed-upon terms continue for the duration of the contract and conclude with the termination date. The same holds true for contracts with automatic extensions for one or multiple years, but not for a contract containing a clause for possible renewal.

Nonetheless, the parties may *mutually* decide to renegotiate the contract to remove the minimum wage provisions and the related impact on contract pricing. And some contracts may already contain provisions for renegotiation based upon potential changes in the law.

C. Milwaukee County Employees

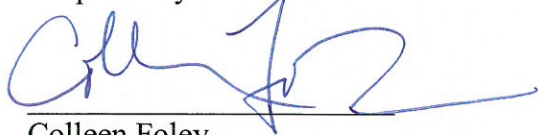
MCGO Chapter 111 also raised wages for certain Milwaukee County employees earning less than the ordinance's established rate at its March 2011 inception. MCGO 111.03(1) describes the employees directly impacted by the ordinance and those exempted from it. Impacted employee's wages are also subject to an annual increase by the Comptroller's payroll division pursuant to section MCGO 111.02(e).

Act 327 does not (and could not) require rescission of wage increases implemented before its enactment. But it does require that Chapter 111 wage increases cease post-Act 327. Practically speaking, that means the payroll division cannot implement the wage escalator on January 1, 2019 going forward. Milwaukee County may of course increase wages for other reasons unrelated to the repealed minimum wage law and now defunct minimum wage ordinance.

Questions?

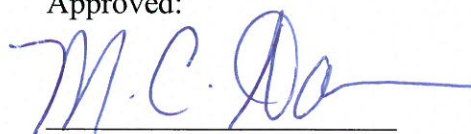
Questions about Act 327 and its impact on particular agreements may be directed to the Office of Corporation Counsel or the Department of Administration Procurement Division.

Respectfully submitted:



Colleen Foley
Deputy Corporation Counsel

Approved:



Margaret C. Daun
Corporation Counsel

